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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,097	12/30/2003	Dale Murray	364106/0346 SBP/JFD	3175

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EXAMINER

SWIATEK, ROBERT P

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,097

Applicant(s)

MURRAY, DALE

Examiner

Robert P. Swiatek

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 9-11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimball (US 2,718,987). The patent to Kimball discloses an integrally formed insert or plug 15 for insertion into an outlet opening 14 of a container 10. The plug includes a curved insertion portion 21, a nipple flange 20 at one end of the insertion portion, a nipple extension adjacent the flange 20 and terminating in a nipple extension face 17, and a feed hole 19 in the nipple extension face. As can be seen from Figure 1 of Kimball, the vertical distance between a horizontal plane tangent to the upper extent of hole 19 and a horizontal plane containing the upper surface of flange 20 is less than the outside (or inside) diameter of insertion portion 21. Claim 11 has not been given weight inasmuch as the feed bottle *per se* has not been positively recited in claim 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 5, 6, 8, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimball. Although the inner horizontal wall (as seen in Figure 1) of the Kimball plug 15 is not recessed or concave, to make it so would have been obvious to one skilled in the art wishing to reduce the amount of material used to construct the plug and, hence, reduce manufacturing costs. As to claims 8, 12, use of stainless steel in the plug construction and the precise dimensions of the plug also would have been obvious to one skilled in the art wishing to increase plug durability while enabling it to fit more securely in the container 10 (friction between the plug extension portion 21 and inner wall of the container opening 14 would be increased concomitantly due to the increased length of portion 21).

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Pugh (US 5,921,418). The Pugh valve cap includes a cap 20 having a curved side wall 22 and circumferential flange 21 (Figure 4 of Pugh), a stopper 32, a nipple insert 10 with a curved insertion portion 12', a nipple flange 14', a nipple extension 15' with a nipple extension face (unnumbered, but shown in Figures 6, 7 as the top, horizontal surface of extension 15'), and a feed hole 16'. The vertical distance between a horizontal plane tangent to feed hole 16' and a horizontal plane containing the uppermost flange 14' is less than the inside diameter of portion 12'. Additionally, the horizontal distance between a vertical plane containing the longitudinal axis of feed hole 16' and its associated passageway and a vertical plane containing a portion of the flange 14' is also less than the inner diameter of portion 12'.

Claims 15, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pugh. The Pugh patent discloses a method of forming a bottle assembly including providing a cap 20 with a curved side wall 22 and circumferential flange 21, a stopper 32, a nipple insert 10 with a curved

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insertion portion 12', a nipple flange 14', a nipple extension 15' with a nipple extension face (unnumbered, but shown in Figure 6 as the top, horizontal surface of extension 15'), and a feed hole 16'. The assembly is constructed such that the vertical distance between a horizontal plane tangent to feed hole 16' and a horizontal plane containing the uppermost flange 14' is less than the inside diameter of portion 12'. Additionally, the construction method results in the horizontal distance between a vertical plane containing the longitudinal axis of feed hole 16' and its associated passageway and a vertical plane containing a portion of the flange 14' also being less than the inner diameter of portion 12'.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 6, claim 13, line 5, claim 14, line 13, claim 15, line 8, and claim 16, line 12, it is unclear if the recited "distance" refers to measurement in a *horizontal* or a *vertical* direction.

Applicant's arguments filed 23 January 2006 have been fully considered but they are not persuasive. Claims 1-16 are not believed allowable for the reasons set forth above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The patents to Bingham (US 2,051,513) and Collins (US 3,118,578) have been cited to provide additional examples of dispensing caps.

Summary: Claims 1-16 have been rejected.

RPS: 571/272-6894
30 March 2006

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
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